

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10**

HUB ONE LOGISTICS LTD.¹

EMPLOYER

and

CASE 10-RC-15263

**INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, AFL-CIO, LOCAL UNION 528,**

PETITIONER

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to the undersigned.

Upon the entire record in this case, the undersigned finds:²

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is a Pennsylvania corporation with an office and place of business located in Lithia Springs, Georgia, where it is engaged in the warehousing and distribution of food products. During the past twelve (12) months, a representative period, the Employer, from its Lithia Springs operation, sold and shipped goods valued in excess \$50,000.00 directly to customers located outside the State of Georgia.

¹ The name of the Employer appears as amended at the hearing.

² Both the Employer and the Petitioner filed briefs that were duly considered.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9 (c)(1) and Section 2(6) and (7) of the Act.

5. The parties are in basic agreement over the appropriate scope and composition of the collective bargaining unit, i.e., warehouse employees employed by the Employer at its Employer's Lithia Springs, Georgia facility. The Employer, contrary to the Petitioner, seeks to exclude seven warehouse group leaders as supervisors. The Petitioner's proposed unit consists of approximately 44 employees.

A. GENERAL BACKGROUND

The Employer operates a warehouse supplying product for use by McDonald's restaurants to various distribution centers. The Employer has been in operation since 1996, but its Lithia Springs facility, at issue herein, was opened in November 2000. At its Lithia Springs facility the Employer supplies distribution centers in the southeastern United States and in foreign countries. This facility is the Employer's largest warehousing operation, with approximately 300,000 square feet of warehousing space.

The facility is a tri-temperature facility with a freezer area, a cooler area and a dry area. Perishable goods are stored in the freezer and cooler areas while non-perishable items are stored in the dry area. Employees are assigned to four distinct work areas: dry, freezer, promotions and international.

Carl Dubose is the Division Manager responsible for the operation of the facility. There are also five warehouse managers assigned to the different work areas³. Travis Anthony is the manager over the dry area, Frank Sterling is the manager of the freezer area, Jessie Strickland is the manager of promotions, Steve Zontek is the manager of the international area and Bryan Rape is the facility-wide manager assigned to the second shift.

The facility generally operates in three shifts Monday through Friday. The work hours of the first shift are from 6:00 a.m. until 2:30 p.m. with 21 operators regularly scheduled to work. The work hours of the second shift are from 2:30 p.m. until 11:00 p.m. with 15 operators regularly scheduled to work. On split shift the hours vary but are generally from 7:00 p.m. until 3:00 a.m. with only one operator regularly scheduled to work. Three managers, Travis, Strickland and Zontek work first shift, Brian Rape works the second shift and Frank Sterling works a mid-shift from 11:00 a.m. until 7:00 p.m.

At issue is the status of the seven warehouse group leaders, Nate Adams, Machion Bray, John Brown, Harry Newman, Tim Peek, Melvin Phelps and Billy Rowell. Each group leader is assigned to a specific work area and shift. Nate Adams works the split shift and Harry Newman works the first shift; both are assigned to the freezer area and report to Frank Sterling. John Brown works the second shift and Billy Rowell works the first shift, both are assigned to the dry area and report to Travis Anthony. Tim Peek works alternating shifts in the international dry area and Melvin Phelps works the first shift in the international freezer area, both report to Steve Zontek. Machion Bray is assigned to first shift and rotates to departments as needed.

³ The parties stipulated that Dubose and the five warehouse managers are supervisors within the meaning of Section 2(11) of the Act.

The group leaders perform duties in addition to general warehouse work.⁴ The group leaders are paid a \$1.00 an hour premium. Like the warehouse operators, the group leaders are hourly paid, non-exempt employees. All employees at the facility, including operators, group leaders and the managers receive the same benefit package. Group leaders wear different uniforms than do the operators. Unlike the operators, group leaders are assigned a company cell phone and given keys and security codes to the building. In contrast to the warehouse managers, group leaders do not have offices at the facility.

B. SPECIFIC INDICIA OF SUPERVISORY STATUS

It is well established that the party who asserts that an individual possesses supervisory status, and thus should be excluded from any bargaining unit, bears the burden of demonstrating the actual exercise of supervisory authority by the individual in question. *NLRB v. Kentucky River Community Care*, 532 U.S. 706 (2001); *Bennett Industries*, 313 NLRB 1363 (1994). The possession or exercise of any of the authorities enumerated in Section 2(11) of the Act is sufficient to confer supervisory status upon an individual. *NLRB v. Kentucky River*, supra; *Queen Mary*, 317 NLRB 1303 (1995). Nevertheless, the Board is careful not to liberally construe the enumerated authorities because supervisory status excludes an individual from the protections afforded by the Act. *Tree-Free Fiber Co., LLC*, 328 NLRB No. 51 (1999). Therefore, only if the exercise of authorities enumerated in the Act is not merely routine, clerical, perfunctory, or sporadic in nature, but requires the use of independent judgment, is a finding of supervisory status appropriate. *Byers Engineering Corp.*, 324 NLRB 740, 741 (1997); *Clark Machine Corp.*, 308

⁴ The record does not disclose what percentage of a group leader's time is spent performing these additional duties and what percentage is spent performing operator duties.

NLRB 555 (1992); *Bowne of Houston*, 280 NLRB 1222, 1223 (1986); See also *Juniper Industries*, 311 NLRB 109 (1993). As the party asserting that the group leaders are supervisors within the meaning of the Act, the Employer bears the burden to establish that they exercise supervisory authority. The Employer advances several arguments that it claims establish the possession of supervisory status by the group leaders. I will deal with these arguments *seriatim*.

1. Responsible Direction

Warehouse operators' duties include operating forklifts, loading and unloading product from trucks, storing incoming product and housekeeping. Group leaders also perform this same work. Witnesses testified, as detailed below, that the group leaders may assign, or reassign, employees to duties based on the demands of the business or to fill-in for absent employees.

Group leader Nate Adams testified that he will determine how many operators are needed to perform a particular task and will assign operators accordingly. No other specific testimony was proffered to explain what factors, other than the needs of the business, would be considered by the group leaders in their assignment of work. Group leader Machion Bray testified without contradiction that the operators generally have an assigned area in which they work every day. The warehouse managers assign these work areas to operators.

Some group leaders work in their areas without the presence of any management personnel. For instance, group leader Harry Newman works approximately 5 ½ hours of every shift in the freezer department before manager Frank Sterling arrives. During that same period there are approximately six to ten operators working in the freezer department. Additionally, Nate Adams, the group leader assigned to the split shift, works without a manager present from 11:00 p.m. until the work is completed or the shift ends at 3:30 a.m. Adams testified that he gives instructions to the operators during the period that no managers are present in the facility.

The only specific example Adams provided concerned instructions on how to load a truck properly. At the end of the shift, Adams is responsible for securing the building. While only one operator is scheduled to work the split shift with Adams, three or more other operators regularly work overtime on split shift.

In addition to Newman and Adams, other group leaders may infrequently work without a manager present when the manager is absent or on weekends when none of the managers is available to work. Group leader John Brown testified that he may work without a manager present every three to four months. Brown did not testify that the absence of a manager resulted in any change in his responsibilities.

As stated above, the work of the warehouse operators consists of receiving and unloading goods from trucks, storing the delivered goods and loading outgoing goods onto trucks. Such warehouse work is routine in nature, as is evidenced by the minimal training required as discussed below. As each operator is generally assigned a specific work area by management, I can not conclude, based on the existing record, that the group leaders' assignment of work to operators requires any exercise of independent judgment. *Sears, Roebuck and Company*, 292 NLRB 753 (1989). "The Board, with court approval, has found that the assignment and direction of employees in connection with the loading and unloading of trucks, and in connection with the storing of goods, is generally routine in nature." *Millard Refrigerated Services, Inc.*, 326 NLRB 1437 (1998). As the record fails to sufficiently explicate the factors that influence a group leader's allocation of work, I must conclude that the Employer has not met its burden of establishing that the assignment of work by the group leaders entails the requisite exercise of independent judgment necessary to endow supervisory status for this reason.

While some group leaders do work without immediate supervision present, I cannot

conclude that this evidence alone establishes their supervisory status. There was no record evidence that the group leaders exercised any supervisory function during these times. In situations such as these, where a group leader works without a manager present and gives routine instructions to employees, the Board has concluded that being left as the sole responsible party does not require the finding of supervisory status.⁵ *Azusa Ranch Market*, 321 NLRB 811 (1996). Furthermore, the fact that some group leaders may fill-in for absent supervisors does not, without a finding that such substitution is a regular and substantial portion of their work time, establish supervisory authority. *Benchmark Mechanical Contractors*, 327 NLRB No. 151 (1999); *Canonie Transportation Co.*, 289 NLRB 299 (1988). In summary, the record evidence is insufficient to confer supervisory status on the group leaders.

2. Training

Group leaders are also responsible, in part, for training new employees. The Employer hires new employees through temporary service agencies. When a temporary employee starts, the group leaders train the employee on the Employer's bar code system, the scan gun, forklift procedures, proper "put away" procedure and how to load and unload trucks. Division Manager Dubose testified that there is no formal training procedure but that the group leader will either train the employee or perhaps assign this duty to another operator.

Group leader Nate Adams testified that on an employee's first day, he would have the new employee follow him and observe procedures. Adams testified that he would have the trainee shadow him for three to four hours and then Adams would assign another operator to accompany the trainee because "everybody does things differently." In this regard, group leader

⁵ Likewise, the group leaders possession of the keys and security code do not compel a finding of supervisory status. *Azusa Ranch Market*, supra.

Machion Bray testified that he had trained new employees before his promotion to group leader.

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Based on the foregoing, I cannot conclude that the group leaders' role in training temporary employees vests them with supervisory authority. The record testimony establishes that while group leaders are primarily responsible for training new employees, unit employees also engage in such training. Training alone does not necessitate a finding of supervisory status as designation as a trainer may result merely from an individual's superior knowledge and experience. *Byers Engineering Corp.*, 324 NLRB 740 (1997). While the group leader may provide the new operator with feedback on his performance, as group leader Nate Adams testified, there is no evidence that this "evaluation" has any effect on their employment status. Therefore, I find that the evidence concerning the group leaders' role in training new employees is insufficient to establish their supervisory authority.

3. Time-off and Overtime

The Employer's witnesses testified that the group leaders play a role in granting employees time off and in scheduling overtime. Employees who are sick telephone the facility and leave a message that they will not be in. No testimony was elicited to establish who, if anyone, either approves or disallows these absences. The testimony established that group leaders may be required to adjust other operator's assignments as a result of absences, but there was no evidence that group leaders have any role in excusing absences.

Although there was conclusional testimony that group leaders may permit employees to leave work early, either because their work is completed or because the employee has requested

⁶ Group leader John Brown testified that he provides feedback directly to the operators about the work they are performing. It was unclear whether this feedback was provided to trainees or to all operators. Even assuming this feedback is provided to trainees, there was no record evidence that Brown's evaluations had any effect on employment status.

to leave early for personal reasons, no specific examples were provided. Moreover, there was no testimony to establish what factors the group leader may consider prior to permitting an employee to leave, whether there are established procedures concerning such requests or if the group leaders have the authority to deny such requests.

In addition to the granting of time off, group leaders may also call employees into work. For example, if there are an excessive number of employees absent, either because of illness or weather, the group leader may call other employees into work. Division Manager Dubose testified that the group leaders would call employees into work in order of their seniority.

Finally, contradictory testimony was presented concerning the group leaders' role in determining whether overtime work is necessary and their role in selecting employees to work overtime. Division Manager Dubose testified that group leaders may schedule overtime if the workload so requires without consulting with, or obtaining the approval of, management. Dubose noted that group leaders sometimes solicit management approval, but did not identify those circumstances when group leaders would independently schedule overtime or when they would approach management first. Furthermore, no specific testimony was proffered regarding what factors a group leader relies upon to determine whether overtime is necessary.

Group leader Nate Adams, who was promoted on January 2, 2002, testified that he has the authority to schedule overtime without management approval. According to Adams, he selects employees for overtime based on his assessment of their skills and abilities. Adams later acknowledged that the operators usually ask to work overtime before Adams solicits their assistance. Moreover, Adams testified that if an operator refuses to work overtime upon Adam's request, he would simply ask someone else to work overtime.

With regard to Adams determination to have operators work overtime, while Adams testified that he made this determination himself, he also testified that he consults with his immediate supervisor as to the necessity for overtime. Further, Adams testified that he “had” to let warehouse manager Bryan Rape know which employees he selected. Finally, Adams testified that each group leader’s authority was different. The authority of other group leaders in this regard was not specifically addressed in the record.

In contrast to Adams’ testimony, group leaders Machion Bray and Billy Rowell both testified that they had not been given authority to schedule overtime, that they were unaware of any group leaders with such authority and that they had never exercised any such authority.⁷

The record testimony concerning group leaders’ ability to grant employees’ time off, schedule overtime and to call employees in to work, taken in its entirety, is insufficient to establish the exercise of independent judgment. While group leader Adams has permitted employees to leave work, the record does not establish whether he has authority to deny such requests. Further, permitting employees to leave work, without more, does not necessitate a finding that the group leader exercised independent judgment. The Board has found such authority to be ministerial and routine in nature. *Millard Refrigerated Services, Inc.*, supra; *Sears Roebuck and Co.*, supra.

The record reflects that group leaders may call employees into work in order of their seniority when staffing demands so require. This limited delegation does not reflect the exercise of independent judgment necessary to establish supervisory authority.

The totality of the evidence suggests that certain group leaders have more authority than others to determine whether overtime is necessary. The Board has held that “general, conclusory

⁷ Similar contradictory testimony was offered as to whether the group leaders could themselves work overtime without prior approval. Resolution of this factual dispute is unnecessary inasmuch as scheduling of one’s own work

evidence, without specific evidence establishing that [the individual] in fact exercises independent judgment in making an overtime assignment, does not establish supervisory authority.” *Tree-Free Fiber Co., LLC*, 328 NLRB No. 51 (1999). In summary, Division Manager Dubose asserts that the group leaders possess authority to schedule overtime without managerial approval while group leaders Bray and Rowell state that management approval is required before overtime is permitted. In contrast, group leader Adams states that he will determine independently when overtime is required, by a process not specified, and will select which employees should work the overtime. However, Adams acknowledged that employees usually volunteer to work overtime and that employees have refused overtime without penalty. The testimony as to the granting of time-off and assignment of overtime by group leaders is inconclusive and does not definitively establish that group leaders possess supervisory authority. The Employer has therefore failed to carry its burden of proving the possession of supervisory capacity in this regard.

4. Recommendations and Evaluations

The Employer asserts that the group leaders have the authority to effectively recommend hiring and promotion of other employees. As stated above, the Employer initially employs individuals from a temporary staffing service. Division Manager Dubose testified that in July or August 2001, group leaders Machion Bray and Billy Rowell participated in this process by interviewing between 15 and 25 candidates. Dubose testified that he made the ultimate hiring decision but that the group leaders and the managers did make recommendations. Dubose testified that he gave consideration to the recommendations but did not testify as to what weight he gave the recommendations. There is no record evidence as to the specifics of the hiring

hours is not an indicia of supervisory status.

protocol, e.g., whether each candidate was interviewed separately by other managers or interviewed by the group leaders only.

While group leaders Bray and Rowell agree that they spoke to approximately 15 candidates for employment, they state they had no role in selecting the candidates. Bray and Rowell testified that they used established interview questions to determine a candidate's qualifications.⁸ Bray and Rowell testified that they made no formal recommendations for hire, but simply evaluated the candidates' experience. Rowell further testified that on one occasion he specifically recommended that a certain candidate not be hired but that the candidate nonetheless was hired. Bray testified that the final decision to hire any candidate was made by the managers

Following a period of service, the temporary employees are considered by the Employer for retention as permanent employees. Division Manager Dubose testified that he solicits input from the group leaders when making decisions as to whether to retain operators employed as temporaries. According to Dubose, since the group leaders work with the temporary operators every day, he highly values their input regarding the retention of these employees and has "typically . . . made decisions based" on their evaluation. Dubose also testified that the "input from the group leaders is what we primarily base our decision on". Dubose names several temporary employees recommended for retention by the group leaders who were, in fact, retained. Group leader John Brown testified that he had recommended that certain temporary employees be retained and that those same candidates were hired. However, Brown couldn't recall whether any of the temporary employees for whom he provided a negative recommendation had been dismissed. Despite this testimony, the record does not reflect

⁸ While the record suggests that Bray and Rowell participated in establishing the criteria used by the Employer to evaluate candidates for employment, the record does not establish what role the group leaders played or what weight

whether the retention decision is based solely on either a favorable or a negative recommendation from the group leaders, or whether managerial or other input is also solicited and considered.

Regarding the group leaders' role in employee promotion, Division Manager Dubose testified that he solicits the group leaders' recommendations for promotion of operators to group leader positions. Specifically, Dubose testified that group leader Harry Newman recommended Melvin Phelps for promotion, and that group leader Rowell and manager Travis Anthony recommended Machion Bray for promotion. In contrast, Billy Rowell testified that he had recommended only one candidate for promotion to group leader, Kevin Johnson, and he was not promoted. According to Dubose, Johnson was not considered for promotion because he didn't apply for the job. Again, as with the issue of retaining temporary employees, the record testimony does not detail either the promotion process or if the promotion recommendation by a group leader, whether positive or negative, is alone dispositive of the issue.

The record also addresses the group leaders' authority to evaluate employees. According to Dubose, since 2001, the Employer has utilized a formal evaluation process. Dubose testified that written performance evaluations are used to determine retention, promotion and discipline. According to Dubose, the group leaders have "participated" in the evaluation process. Dubose testified that some group leaders have provided information to the managers who have then completed the evaluation forms. Several written evaluation forms were introduced that had been completed by previous group leaders. No evaluation forms completed by current group leaders were introduced nor was the omission explained.

Dubose also testified that in addition to the formal written evaluation process, group leaders provide informal evaluation of operators by providing "general comments on what they perceived"

their input was afforded.

about the operators' performance. Dubose testified that these informal comments are given "highest consideration." Aside from the foregoing, there were no details provided as to how such comments are recorded, what weight is given to this informal feedback or what effect such feedback has upon an operators' employment.

The testimony concerning the group leaders' role in recommending employees for hire and promotion is inadequate to establish supervisory authority. While it is clear that group leaders have participated in the interview process, the record fails to establish what weight their collective recommendations may have been given. Whereas Division Manager Dubose concludes that the recommendations were given great weight, no explanation is proffered as to the basis for this conclusion nor are details provided to establish that the recommendations were effective.

Moreover the testimony which showed that group leaders' opinions are solicited for decisions on retention, promotion and evaluations was insufficient to establish the effectiveness of these recommendations inasmuch as it appears that the managers' opinions are likewise solicited. Additionally, there was no probative evidence regarding the weight afforded the group leaders' recommendations. As I cannot conclude, based on this record testimony, that the group leaders' recommendations are independently decisive, the Employer has failed to meet its burden to establish this indicia of supervisory status.

5. Discipline

The testimony concerning the group leaders' authority to discipline operators is contradictory and confusing. According to Division Manager Dubose, he informed both the group leaders and the operators that group leaders had the "same authority" as managers to give operators "written counseling or verbal warnings, written warnings, and [suspensions]." The only examples given of such discipline were that group leader John Brown sent two employees home for

insubordination. According to Dubose, he was not consulted before Brown “suspended” the two operators. Brown similarly testified that on separate occasions, he sent operators home for the remainder of their shifts because they were insubordinate. Brown testified that he sent one employee home because the employee, who was preparing to go home, refused Brown’s direct order to return to the work. Brown then testified that his discipline for one of the employees he sent home (or perhaps both, the record is unclear) was countermanded by a manager. Group leader Billy Rowell testified that Brown had informed Rowell that manager Bryan Rape had overridden a suspension.

There was no evidence presented to establish what effect, if any, these “suspensions” had on the operator’s employment status. It remains unclear whether either, both or neither of the operators were paid for the time at home, if, in fact, they were sent home. There was similarly no evidence presented that any other group leader has issued any discipline, oral or written.

Group leaders Machion Bray and Billy Rowell both testified that they had never been informed that they had the authority, as group leaders, to issue discipline to operators. Bray testified that he has reported employees’ poor performance to both his manager Travis Anthony and to Division Manager Dubose. According to Bray, his complaints to Anthony had no effect and when he went to Dubose, Dubose advised Bray that “they” would handle his complaints. Without contradiction, Bray testified that he has reported other operator’s misconduct and that “nothing” has happened. Rowell testified that Dubose met with him privately in Dubose’s office and asked Rowell to report operators who were not performing their jobs. Rowell testified that he told Dubose that he would not report operators since managers witnessed the same conduct and were doing nothing about it.

I find that the testimony concerning the group leaders role in disciplining other unit

employees insufficient to meet the Employer's burden to establish supervisory authority.

Whereas the Employer's witnesses testified that group leaders have been granted authority to discipline, the Petitioner's witnesses, both of whom are group leaders, state that they have not been granted such authority. Both Rowell and Bray indicate that they have been solicited to report wrongdoing of operators to management, and both state that they have no authority to correct any wrongdoing. It is not necessary, on this record, to resolve any potential factual disputes to conclude that the Employer has failed to present sufficient evidence that the supervisors possess the authority to discipline employees.

The only direct evidence of disciplinary authority is group leader John Brown's instructions to two operators to leave the plant because of alleged insubordination. The record indicates that, in at least one of the incidents, a manager immediately overruled Brown. Thus, the record seems to show that any disciplinary measures ordered by a group leader are independently reviewed by management and subject to reversal. There was no evidence that any such incident was recorded or retained in the individuals personnel file for later consideration. Based on the foregoing, I find that there is insufficient evidence to establish that the group leaders effectively recommend discipline and must therefore conclude that the Employer has failed to establish this indicia of supervisory status.

6. Grievances

Testimony was presented concerning the group leaders ability to resolve employee "problems." Division Manager Carl Dubose testified that he has personally told operators, on a fairly regular basis, that they should bring any problems they have to the attention of the group leaders. According to Dubose, the group leaders have authority to remedy these problems. When asked what types of problems group leaders had addressed for employees, Dubose stated

only that group leaders have helped employees resolve problems with the computer system and freight security. No other witness addressed this issue. There was no evidence presented to establish that the group leaders had the authority to redress employee grievances concerning working conditions. As the Employer failed to establish that the group leaders have authority to redress employees' grievances, it has failed to establish this indicia of supervisory status.

7. Other Indicia of Supervisory Status

Division Manager Dubose testified that each weekday he conducts a meeting with his managers at shift change. At these meetings, the managers discuss different issues of daily operations including personnel and employee performance issues. Although group leaders regularly attended these meetings prior to the fall of 2001, currently only Dubose and the other managers attend the meetings. Group leaders now attend only when necessary to discuss issues related to their work.⁹

Testimony was also proffered to establish the group leaders' authority, in general, on behalf of the Employer. For instance, Division Manager Dubose testified that group leaders and managers have the sole authority to reject shipments and to break the seals on all loads. Group leader Billy Rowell, however, testified that he has never rejected a load without authorization from a manager and that other operators have similarly brought damaged cargo and broken seals to a manager's attention. Dubose similarly testified that group leaders process operators' timecards and distribute paychecks in the absence of a manager. Dubose did not elaborate as to what action the group leaders undertake to process timecards.

None of these facts necessitate a finding of supervisory status. The foregoing does not establish that the group leaders possess any of the authorities enumerated in Section 2(11) of the

⁹ Carl Dubose testified that the reason group leaders no longer regularly attend meetings is that their attendance resulted in the absence of "supervisors" on the work floor. Conclusory testimony regarding the supervisory status

Act. While secondary indicia of supervisory status may assist in the determination of supervisory status, standing alone they are insufficient to establish supervisory authority.

In this regard, if the group leaders were determined to be supervisors rather than employees, the ratio of supervisors to employees would be approximately 1:3. Such a high degree of supervision is unnecessary and unrealistic in a warehouse environment. In contrast, if the group leaders are included in the unit, the ratio of supervisors to warehouse employees is a more judicious 1:7. While not conclusive, the ratio of supervisory personnel to warehouse employees in this case directs a finding that the group leaders are not supervisors within the meaning of the Act.

In conclusion, and based upon testimony in this record, the group leader responsibilities include training temporary employees, giving routine work assignments to unit employees, interviewing employees, providing informal assessments of employees work, allowing employees to leave early, processing time cards and distributing paychecks. However, the record was failed to establish that any of these duties require the exercise of independent judgment necessary to establish supervisory authority. *Esco Corp.*, 298 NLRB 837 (1990). I shall, therefore, include the group leaders in the bargaining unit.

C. CONCLUSION

In view of the foregoing, and on the record as a whole, I find that the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time warehouse employees and warehouse group leaders,

of individual employees is not probative. *Chevron Shipping Co.*, 317 NLRB 379, 381, FN 6 (1995).

employed by the Employer at the its Lithia Springs, Georgia facility, but excluding all office clerical employees, professional employees, guards and supervisors as defined in the act.

DIRECTION OF ELECTION¹⁰

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations¹¹. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently

¹⁰ Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by March 15, 2002.

¹¹ Your attention is directed to Section 103.20 of the Board's Rules and Regulations, a copy of which is enclosed. Section 102.30 provides that the Employer must post the Board's official Notice of Election at least three full working days before the election, excluding Saturdays and Sundays, and that its failure to do so shall be grounds for setting aside the election whenever proper objections are filed.

replaced.¹² Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by the International Brotherhood of Teamsters, AFL-CIO, Local Union 528.

Dated at Atlanta, Georgia, this 1st day of March, 2002.

/s/ Joseph V. McMahon

Joseph V. McMahon
Acting Regional Director
National Labor Relations Board
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1000 Harris Tower, Peachtree Center
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177-8500
466-7550-8700

¹² In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear Inc., 156 NLRB 1236 (1966); N.L.R.B. v. Wyman-Gordon Company, 384 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, 2 copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. North Macon Health Care Facility, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in the Regional Office, 233 Peachtree Street, 1000 Harris Tower, Atlanta, Georgia 30303, on or before March 8, 2002. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.